

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE APRIL 28, 2009

SENATE BILL

No. 773

Introduced by Senators Florez and Steinberg
(Coauthor: Senator Leno)

February 27, 2009

An act to amend Sections 4453 and 4658 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Florez. Workers' compensation: disability benefits.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, ~~or~~ *and* in the course of, employment. Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, permanent partial disability, and in case of death.

This bill would state the intent of the Legislature to enact legislation that would adjust the amount of permanent partial disability benefits paid to workers in order to ensure that the benefits are fair, adequate, and more favorably aligned when compared with permanent partial disability benefits paid to workers in other states.

This bill would provide for increased permanent partial disability benefits for injuries occurring on or after January 1, 2010.

Existing law requires the payment of workers' compensation benefits for injuries causing permanent disability to be computed in accordance with a prescribed formula.

This bill would revise the formula for computing permanent disability payments for injuries causing permanent disability, ~~which~~ *that* occur on or after January 1, 2010, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The chaptering of Chapters 635 and 639 of the Statutes of
4 2003 and Chapter 34 of the Statutes of 2004 reflected the intent
5 of the Legislature to create a workers' compensation system that
6 is fair to all parties involved.

7 (b) Ensuring that permanently disabled workers receive fair
8 compensation is a high priority of the Legislature.

9 (c) According to the United States Chamber of Commerce,
10 benefits for California's permanently disabled workers are among
11 the lowest in the nation.

12 ~~(d) In its effort to ensure adequate benefit levels for permanently~~
13 ~~disabled workers, it is not the intent of the Legislature to undermine~~
14 ~~the positive effect workers' compensation reform has had on~~
15 ~~California's employers and workers.~~

16 SEC. 2. It is the intent of the Legislature to enact legislation
17 that would adjust the amount of permanent partial disability
18 benefits paid to workers in order to ensure that the benefits are
19 fair, adequate, and more favorably aligned when compared with
20 permanent partial disability benefits paid to workers in other states.
21 In its effort to ensure fair and adequate benefit levels for
22 permanently disabled workers, the Legislature does not intend to
23 undermine the positive effect workers' compensation reform has
24 had on employers and employees in the state.

25 SEC. 3. Section 4453 of the Labor Code is amended to read:

26 4453. (a) In computing average annual earnings for the
27 purposes of temporary disability indemnity and permanent total
28 disability indemnity only, the average weekly earnings shall be
29 taken at:

1 (1) Not less than one hundred twenty-six dollars (\$126) nor
2 more than two hundred ninety-four dollars (\$294), for injuries
3 occurring on or after January 1, 1983.

4 (2) Not less than one hundred sixty-eight dollars (\$168) nor
5 more than three hundred thirty-six dollars (\$336), for injuries
6 occurring on or after January 1, 1984.

7 (3) Not less than one hundred sixty-eight dollars (\$168) for
8 permanent total disability, and, for temporary disability, not less
9 than the lesser of one hundred sixty-eight dollars (\$168) or 1.5
10 times the employee's average weekly earnings from all employers,
11 but in no event less than one hundred forty-seven dollars (\$147),
12 nor more than three hundred ninety-nine dollars (\$399), for injuries
13 occurring on or after January 1, 1990.

14 (4) Not less than one hundred sixty-eight dollars (\$168) for
15 permanent total disability, and for temporary disability, not less
16 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
17 times the employee's average weekly earnings from all employers,
18 nor more than five hundred four dollars (\$504), for injuries
19 occurring on or after January 1, 1991.

20 (5) Not less than one hundred sixty-eight dollars (\$168) for
21 permanent total disability, and for temporary disability, not less
22 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
23 times the employee's average weekly earnings from all employers,
24 nor more than six hundred nine dollars (\$609), for injuries
25 occurring on or after July 1, 1994.

26 (6) Not less than one hundred sixty-eight dollars (\$168) for
27 permanent total disability, and for temporary disability, not less
28 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
29 times the employee's average weekly earnings from all employers,
30 nor more than six hundred seventy-two dollars (\$672), for injuries
31 occurring on or after July 1, 1995.

32 (7) Not less than one hundred sixty-eight dollars (\$168) for
33 permanent total disability, and for temporary disability, not less
34 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
35 times the employee's average weekly earnings from all employers,
36 nor more than seven hundred thirty-five dollars (\$735), for injuries
37 occurring on or after July 1, 1996.

38 (8) Not less than one hundred eighty-nine dollars (\$189), nor
39 more than nine hundred three dollars (\$903), for injuries occurring
40 on or after January 1, 2003.

1 (9) Not less than one hundred eighty-nine dollars (\$189), nor
2 more than one thousand ninety-two dollars (\$1,092), for injuries
3 occurring on or after January 1, 2004.

4 (10) Not less than one hundred eighty-nine dollars (\$189), nor
5 more than one thousand two hundred sixty dollars (\$1,260), for
6 injuries occurring on or after January 1, 2005. For injuries
7 occurring on or after January 1, 2006, average weekly earnings
8 shall be taken at not less than one hundred eighty-nine dollars
9 (\$189), nor more than one thousand two hundred sixty dollars
10 (\$1,260) or 1.5 times the state average weekly wage, whichever
11 is greater. Commencing on January 1, 2007, and each January 1
12 thereafter, the limits specified in this paragraph shall be increased
13 by an amount equal to the percentage increase in the state average
14 weekly wage as compared to the prior year. For purposes of this
15 paragraph, "state average weekly wage" means the average weekly
16 wage paid by employers to employees covered by unemployment
17 insurance as reported by the United States Department of Labor
18 for California for the 12 months ending March 31 of the calendar
19 year preceding the year in which the injury occurred.

20 (b) In computing average annual earnings for purposes of
21 permanent partial disability indemnity, except as provided in
22 Section 4659, the average weekly earnings shall be taken at:

23 (1) Not less than seventy-five dollars (\$75), nor more than one
24 hundred ninety-five dollars (\$195), for injuries occurring on or
25 after January 1, 1983.

26 (2) Not less than one hundred five dollars (\$105), nor more than
27 two hundred ten dollars (\$210), for injuries occurring on or after
28 January 1, 1984.

29 (3) When the final adjusted permanent disability rating of the
30 injured employee is 15 percent or greater, but not more than 24.75
31 percent: (A) not less than one hundred five dollars (\$105), nor
32 more than two hundred twenty-two dollars (\$222), for injuries
33 occurring on or after July 1, 1994; (B) not less than one hundred
34 five dollars (\$105), nor more than two hundred thirty-one dollars
35 (\$231), for injuries occurring on or after July 1, 1995; (C) not less
36 than one hundred five dollars (\$105), nor more than two hundred
37 forty dollars (\$240), for injuries occurring on or after July 1, 1996.

38 (4) When the final adjusted permanent disability rating of the
39 injured employee is 25 percent or greater, not less than one hundred

1 five dollars (\$105), nor more than two hundred twenty-two dollars
2 (\$222), for injuries occurring on or after January 1, 1991.

3 (5) When the final adjusted permanent disability rating of the
4 injured employee is 25 percent or greater but not more than 69.75
5 percent: (A) not less than one hundred five dollars (\$105), nor
6 more than two hundred thirty-seven dollars (\$237), for injuries
7 occurring on or after July 1, 1994; (B) not less than one hundred
8 five dollars (\$105), nor more than two hundred forty-six dollars
9 (\$246), for injuries occurring on or after July 1, 1995; and (C) not
10 less than one hundred five dollars (\$105), nor more than two
11 hundred fifty-five dollars (\$255), for injuries occurring on or after
12 July 1, 1996.

13 (6) When the final adjusted permanent disability rating of the
14 injured employee is less than 70 percent: (A) not less than one
15 hundred fifty dollars (\$150), nor more than two hundred
16 seventy-seven dollars and fifty cents (\$277.50), for injuries
17 occurring on or after January 1, 2003; (B) not less than one hundred
18 fifty-seven dollars and fifty cents (\$157.50), nor more than three
19 hundred dollars (\$300), for injuries occurring on or after January
20 1, 2004; (C) not less than one hundred fifty-seven dollars and fifty
21 cents (\$157.50), nor more than three hundred thirty dollars (\$330),
22 for injuries occurring on or after January 1, 2005; (D) not less than
23 one hundred ninety-five dollars (\$195), nor more than three
24 hundred forty-five dollars (\$345), for injuries occurring on or after
25 January 1, 2006; and (E) not less than one hundred ninety-five
26 dollars (\$195), nor more than five hundred fifty-five dollars (\$555),
27 for injuries occurring on or after January 1, 2010.

28 (7) When the final adjusted permanent disability rating of the
29 injured employee is 70 percent or greater, but less than 100 percent:
30 (A) not less than one hundred five dollars (\$105), nor more than
31 two hundred fifty-two dollars (\$252), for injuries occurring on or
32 after July 1, 1994; (B) not less than one hundred five dollars (\$105),
33 nor more than two hundred ninety-seven dollars (\$297), for injuries
34 occurring on or after July 1, 1995; (C) not less than one hundred
35 five dollars (\$105), nor more than three hundred forty-five dollars
36 (\$345), for injuries occurring on or after July 1, 1996; (D) not less
37 than one hundred fifty dollars (\$150), nor more than three hundred
38 forty-five dollars (\$345), for injuries occurring on or after January
39 1, 2003; (E) not less than one hundred fifty-seven dollars and fifty
40 cents (\$157.50), nor more than three hundred seventy-five dollars

1 (\$375), for injuries occurring on or after January 1, 2004; (F) not
2 less than one hundred fifty-seven dollars and fifty cents (\$157.50),
3 nor more than four hundred five dollars (\$405), for injuries
4 occurring on or after January 1, 2005; (G) not less than one hundred
5 ninety-five dollars (\$195), nor more than four hundred five dollars
6 (\$405), for injuries occurring on or after January 1, 2006; and (H)
7 not less than one hundred ninety-five dollars (\$195), nor more than
8 six hundred fifteen dollars (\$615), for injuries occurring on or after
9 January 1, 2010.

10 (c) Between the limits specified in subdivisions (a) and (b), the
11 average weekly earnings, except as provided in Sections 4456 to
12 4459, shall be arrived at as follows:

13 (1) Where the employment is for 30 or more hours a week and
14 for five or more working days a week, the average weekly earnings
15 shall be the number of working days a week times the daily
16 earnings at the time of the injury.

17 (2) Where the employee is working for two or more employers
18 at or about the time of the injury, the average weekly earnings
19 shall be taken as the aggregate of these earnings from all
20 employments computed in terms of one week; but the earnings
21 from employments other than the employment in which the injury
22 occurred shall not be taken at a higher rate than the hourly rate
23 paid at the time of the injury.

24 (3) If the earnings are at an irregular rate, such as piecework,
25 or on a commission basis, or are specified to be by week, month,
26 or other period, then the average weekly earnings mentioned in
27 subdivision (a) shall be taken as the actual weekly earnings
28 averaged for this period of time, not exceeding one year, as may
29 conveniently be taken to determine an average weekly rate of pay.

30 (4) Where the employment is for less than 30 hours per week,
31 or where for any reason the foregoing methods of arriving at the
32 average weekly earnings cannot reasonably and fairly be applied,
33 the average weekly earnings shall be taken at 100 percent of the
34 sum which reasonably represents the average weekly earning
35 capacity of the injured employee at the time of his or her injury,
36 due consideration being given to his or her actual earnings from
37 all sources and employments.

38 (d) Every computation made pursuant to this section beginning
39 January 1, 1990, shall be made only with reference to temporary
40 disability or the permanent disability resulting from an original

injury sustained after January 1, 1990. However, all rights existing under this section on January 1, 1990, shall be continued in force. Except as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

SEC. 4. Section 4658 of the Labor Code is amended to read:

4658. (a) For injuries occurring prior to January 1, 1992, if the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–29.75.....	5
30–49.75.....	6
50–69.75.....	7
70–99.75.....	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

1	Column 1—	
2	Percentage	Column 2—
3	of permanent	Cumulative
4	disability	number of
5	incurred:	benefit weeks:
6	5.....	15.00
7	10.....	30.25
8	15.....	50.25
9	20.....	70.50
10	25.....	95.50
11	30.....	120.75
12	35.....	150.75
13	40.....	180.75
14	45.....	210.75
15	50.....	241.00
16	55.....	276.00
17	60.....	311.00
18	65.....	346.00
19	70.....	381.25
20	75.....	421.25
21	80.....	461.25
22	85.....	501.25
23	90.....	541.25
24	95.....	581.25
25	100.....	for life

26
 27 (2) Two-thirds of the average weekly earnings for four weeks
 28 for each 1 percent of disability, where, for the purposes of this
 29 subdivision, the average weekly earnings shall be taken at not more
 30 than seventy-eight dollars and seventy-five cents (\$78.75).

31 (b) This subdivision shall apply to injuries occurring on or after
 32 January 1, 1992. If the injury causes permanent disability, the
 33 percentage of disability to total disability shall be determined, and
 34 the disability payment computed and allowed, according to
 35 paragraph (1). However, in no event shall the disability payment
 36 allowed be less than the disability payment computed according
 37 to paragraph (2).

38 (1)

1		Column 2—Number of weeks
2		for which two-thirds of
3	Column 1—Range	average weekly earnings
4	of percentage	allowed for each 1 percent
5	of permanent	of permanent disability
6	disability incurred:	within percentage range:
7	Under 10.....	3
8	10–19.75.....	4
9	20–24.75.....	5
10	25–29.75.....	6
11	30–49.75.....	7
12	50–69.75.....	8
13	70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

27		Column 2—Number of weeks
28		for which two-thirds of
29		average weekly earnings
30	Column 1—Range	allowed for each 1 percent
31	of percentage	of permanent disability
32	of permanent	within percentage range:
33	disability incurred:	
34	Under 10.....	4
35	10–19.75.....	5
36	20–24.75.....	5
37	25–29.75.....	6
38	30–49.75.....	7
39	50–69.75.....	8
40	70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after the effective date of the revised permanent disability schedule adopted by the administrative director pursuant to Section 4660. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75.....	3
10–14.75.....	4
15–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	16

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(3) (A) If, within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular

work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, and regardless of whether the injured employee accepts or rejects the offer, each disability payment remaining to be paid to the injured employee from the date the offer was made shall be paid in accordance with paragraph (1) and decreased by 15 percent.

(B) If the regular work, modified work, or alternative work is terminated by the employer before the end of the period for which disability payments are due the injured employee, the amount of each of the remaining disability payments shall be paid in accordance with paragraph (1) and increased by 15 percent. An employee who voluntarily terminates employment shall not be eligible for payment under this subparagraph. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(4) For compensable claims arising before April 30, 2004, the schedule provided in this subdivision shall not apply to the determination of permanent disabilities when there has been either a comprehensive medical-legal report or a report by a treating physician, indicating the existence of permanent disability, or when the employer is required to provide the notice required by Section 4061 to the injured worker.

(e) This subdivision shall apply to injuries occurring on or after January 1, 2010. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75.....	4
10–14.75.....	5
15–24.75.....	7
25–29.75.....	8
30–49.75.....	9
50–69.75.....	11
70–99.75.....	21

1 The numbers set forth in column 2 above are based upon the
2 percentage of permanent disability set forth in column 1 above
3 and shall be cumulative, and shall increase with the severity of the
4 disability in the manner illustrated in subdivision (a).
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